



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0145

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38064.

The Texas Department of Public Safety (the "department") received a request for information concerning a certain fatal accident in Travis County, Texas. You assert that the requested information is excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

You assert that the requested information relates to reasonably anticipated litigation. You indicate the District Attorney will prosecute the driver in the accident. You inform us the "[c]riminal charges of Intoxicated Manslaughter are pending and the District Attorney's Office does not want any information released until after these charges have been settled.

We believe the requested information relates to criminal litigation to which the state may be a party. Since the District Attorney has indicated to you that the information should not be released, we conclude that the department may withhold the information from required public disclosure pursuant to section 552.103 of the Government Code. *See* Open Records Decision No. 121 (1976).¹ However, the department may not withhold from disclosure the medical examiner's report as that report is deemed public by statute. Code Crim Proc. art. 49.25 § 11; *see* Open Records Decision No. 529 (1989) at 4.

Having concluded that the department may withhold the requested information based on section 552.103 of the Government Code, we need not consider your section 552.108 claim at this time. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 38064

¹We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In particular, front page offense report information that the defendant in the litigation has seen may not be withheld from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Enclosures: Submitted documents

cc: Mr. David Harmon
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(w/o enclosures)